IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 2:16cr114
	)	
LAMAR ALEXANDER SINCLAIR,	)	
	)	
Defendant.	)	

POSITION OF THE UNITED STATES WITH RESPECT TO SENTENCING

The United States of America, through its attorneys, Dana J. Boente, United States Attorney, and William D. Muhr, Assistant United States Attorney, hereby submits its position with respect to the defendant's sentencing factors. In the Presentence Investigation Report (PSR), the United States Probation Office determined the applicable guideline range to be a term of 100 to 125 months' imprisonment based on a Total Offense Level of 27 and a Criminal History Category of IV.

In accordance with Section 6A1.2 of the Sentencing Guidelines and Policy Statements and this Court's policy regarding guidelines sentencing, the United States represents that it has reviewed the PSR and disputes neither the sentencing factors nor the guidelines range calculation set forth therein. There are no outstanding objections to the PSR. The United States moves for a one level reduction in the defendant's offense level based on his acceptance of responsibility under Section 3E1.1(b) of the Sentencing Guidelines and Policy Statements. The United States submits that a sentence at the highest end of the Guidelines would fulfill the purposes as set forth in 18 U.S.C. § 3553(a).

I. Background

On July 27, 2016 a criminal complaint was filed was filed against the defendant charging the defendant with distribution of heroin and fentanyl in violation of 21 U.S.C. § 841(a)(1). The defendant was arrested and was detained. On August 30, 2016 a criminal information was filed in the United States District Court, Norfolk, Virginia charging the defendant with conspiracy to distribute 100 grams or more heroin in violation of 21 U.S.C. § 846. On September 7, 2016 the defendant waived indictment and pled guilty to the criminal information with the benefit of a plea agreement. The sentencing hearing is scheduled for December 14, 2016.

The charge against the defendant in the criminal information stems from his criminal conduct starting in 2012 through April 2016. The defendant conspired with approximately eight other individuals to distribute heroin in the Tidewater area of Virginia. The defendant was dealing in gram quantities on a regular basis but was dealing these quantities often over an extended period of time. Some of the heroin the defendant distributed was laced with fentanyl which is a potent pain killer. As noted in the Presentence Report one individual died from heroin that originally came from the defendant and another overdosed but survived. There was, however, an intervening individual in both cases who actually distributed the heroin to the victims. It is unknown whether or not those intervening individual altered the heroin that caused the overdose. But in any event the heroin originally came from the defendant and some of the heroin the defendant sold during a controlled purchase tested positive for fentanyl. The defendant was ultimately arrested when the Virginia Beach Police conducted a series of nine controlled purchases of heroin from the defendant. All of the purchases tested positive for heroin and two of them also tested positive for fentanyl. As stated in the Presentence Report the defendant distributed a little over 727 grams of heroin with some of it laced with fentanyl during the course of the conspiracy.

II. Position on Sentencing and Argument

For the reasons that follow, the government respectfully submits that a sentence at the highest end of the Guideline range is appropriate and reasonable in light of the Section 3553(a) factors.

A. Nature and Circumstances of the Offense

The nature of this offense is very serious. From 2012 through April 2016 the defendant was involved in a conspiracy that distributed a significant amount heroin in Tidewater area of Virginia. Some of the heroin the defendant distributed was laced with fentanyl. Narcotic related deaths have spiked in the past few years and much of that is attributed to the presence of fentanyl mixed with heroin. Fentanyl is similar to heroin but is significantly more potent (and therefore significantly more dangerous) than its counterpart. Because of the lethality and potency of this particular drug, drug overdoses and drug-related deaths have skyrocketed in recent years in the Hampton Roads area and all over the United States. Its mixture with other substances, such as heroin and cocaine, also increases its potential for destruction, as consumers are unaware of its presence or unaware of the amount of fentanyl that is incorporated. The defendant has been a direct contributor to this wider problem as a distributor of these dangerous controlled substances. The Presentence Report lists two victims of overdose from heroin that was originally supplied by the defendant. In one case the victim died and in the second the victim survived. Admittedly, there was an intervening person who actually distributed the heroin to the victims, but the heroin originally came from the defendant and laboratory analysis shows that he has on other occasions distributed heroin laced with fentanyl. At the sentencing hearing the United States will call TFO James Thomas from the Drug Enforcement Administration as a witness. He will testify to other incidents not detailed in the Presentence Report that demonstrate the dangerousness of the heroin that the defendant distributed. The defendant chose to profit from the misery of others addicted to heroin and put their lives at risk. Without question this is a very serious offense and weighs heavily against the defendant.

B. History and Characteristics of the Defendant

This thirty-three-year-old defendant was born in Norfolk, Virginia. The defendant states that he grew up in a positive home. He never knew his father, but his mother worked several jobs and tried hard to raise the defendant to be a responsible individual. His mother states that the defendant was a good kid, but started getting into trouble in high school when started hanging around with the wrong crowd. The defendant is not married but has fathered one child. The defendant suffers from diverticulitis and is receiving medical treatment. He dropped out of Norview High School in the 10th grade in 1999. The defendant has a very spotty employment record and it appears his employment at various places only lasted a short time. The defendant's criminal history started at the age of 18 when he was convicted of animal cruelty. The defendant has four previous convictions for possession of illegal narcotics convictions, three convictions for failure to appear, seven convictions for suspended license or no operator's license, two convictions for reckless driving, one conviction for forgery of a public record and providing a false ID to a police officer and one conviction for discharging a firearm in a public place. Even though the defendant has a lengthy criminal record, most of his sentences consisted of suspended time.

C. Other Factors to be Considered Under 18 U.S.C. § 3553(a)

Among the other factors a sentencing court is to consider under Section 3553(a), the United States highlights the need for the sentence imposed to afford adequate deterrence to future criminal conduct, to promote respect for the law and to protect the public from any future crimes the defendant may commit. The criminal activity of the defendant in selling heroin is clearly a danger to the community. The defendant appears to have little respect for the law and has not been deterred by any prison time the defendant received in the past.

In conclusion, the United States argues that a sentence at the highest end of the Guidelines is a sentence that is sufficient, but not greater than necessary to accomplish the sentencing factors of Section 3553(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of December, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification to the following:

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I HEREBY CERTIFY that on this 7th day of December, 2016, I mailed a true and correct copy of the foregoing to the following:

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/s/

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